

FILED  
U.S. DISTRICT COURT

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2007 APR -2 P 12:48

FEB 20 2007

U.S. DISTRICT COURT

James Hostetter  
 Attorney Pro Se  
 Utah State Prison  
 P.O. Box 250  
 Draper, Utah 84020

DISTRICT OF UTAH

BY: DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT, DISTRICT OF UTAH  
 CENTRAL DIVISION

JAMES HOSTETTER, )  
 Plaintiff, ) Case No. \_\_\_\_\_  
 v. ) CIVIL RIGHTS COMPLAINT AND  
 RICHARD GARDEN, Medical Director, ) DEMAND FOR JURY TRIAL  
 at the Utah State Prison, individually; )  
 SIDNEY ROBERTS, M.D., at the )  
 Utah State Prison, individually; )  
 CHRIS ABBOTT, Physician Assistant, )  
 at the Utah State Prison, individually; )  
 KENNON TUBBS, M.D. at the Utah )  
 State Prison, individually; )  
 DAVID SPARKS, Lieutenant, at the Utah )  
 State Prison, individually; )  
 PAUL RASMUSSEN, Captain, at the Utah )  
 State Prison, individually; )  
 DAVID WOLF, Caseworker, at the Utah )  
 State Prison, individually; )  
*Jones* BIBLE, Officer, at the Utah State )  
 Prison, individually; )  
 ELIZABETH SMITH, Sergeant, at the )  
 Utah State Prison, individually; )  
 BLAKE NIELSON, Deputy Warden, at the )  
 Utah State Prison, individually; )  
 SCOTT CARVER, Warden at the Utah )  
 State Prison, individually; )  
 JOHN DOES 1-10, employees at )  
 Utah State Prison, individually, )  
 Defendants. )

Judge Ted Stewart  
 DECK TYPE: Civil  
 DATE STAMP: 04/02/2007 @ 12:43:50  
 CASE NUMBER: 2:07CV00197 TS

## **JURISDICTION**

1. James Hostetter, is a citizen of Utah, who presently resides at the Utah State Prison, P.O. Box 250, Draper, Utah 84020.

2. Defendant Richard Garden, is a citizen of Utah, and is employed as the Medical Director at the Utah State Prison for the Utah Department of Corrections. At the time the claim(s) alleged in this complaint arose, this defendant was acting under color of state law in that he is the Medical Director at the Utah State Prison for the Utah Department of Corrections and is directly responsible for the wrongful actions alleged herein.

3. Defendant Sidney Roberts, M.D., is a citizen of Utah, and is employed as a medical doctor at the Utah State Prison for the Utah Department of Corrections. At the time the claim(s) alleged in this complaint arose, this defendant was acting under color of state law in that he is a medical doctor for the Utah Department of Corrections and is directly responsible for the wrongful actions alleged herein.

4. Defendant Chris Abbott, P.A., is a citizen of Utah, and is employed as a Physician Assistant at the Utah State Prison for the Utah Department of Corrections. At the time the claim(s) alleged in this complaint arose, this defendant was acting under color of state law in that he is a Physician Assistant at the Utah State Prison for the Utah Department of Corrections and is directly responsible for the wrongful actions alleged herein.

5. Defendant Kennon Tubbs, M.D., is a citizen of Utah, and is employed as a medical doctor at the Utah State Prison for the Utah Department of Corrections. At the time the

claim(s) alleged in this complaint arose, this defendant was acting under color of state law in that he is a medical doctor for the Utah Department of Corrections and is directly responsible for the wrongful actions alleged herein.

6. Defendant James Armstrong, RPT, is a citizen of Utah, and is employed as a physical therapist at the Utah State Prison for the Utah Department of Corrections. At the time the claim(s) alleged in this complaint arose, this defendant was acting under color of state law in that he is a physical therapist for the Utah Department of Corrections and is directly responsible for the wrongful actions alleged herein.

7. Defendant Daniel Sparks, is a citizen of Utah, and is employed as a lieutenant, at the Utah State Prison for the Utah Department of Corrections. At the time the claim(s) alleged in this complaint arose, this defendant was acting under color of state law in that he is a lieutenant, for the Utah Department of Corrections and is directly responsible for the wrongful actions alleged herein.

8. Defendant Paul Rasmussen, is a citizen of Utah, and is employed as a Captain, at the Utah State Prison for the Utah Department of Corrections. At the time the claim(s) alleged in this complaint arose, this defendant was acting under color of state law in that he is a Captain, for the Utah Department of Corrections and is directly responsible for the wrongful actions alleged herein.

9. Defendant David Wolf, is a citizen of Utah, and is employed as a caseworker, at the Utah State Prison for the Utah Department of Corrections. At the time the claim(s) alleged

in this complaint arose, this defendant was acting under color of state law in that he is a caseworker, for the Utah Department of Corrections and is directly responsible for the wrongful actions alleged herein.

10. Defendant Bible, is a citizen of Utah, and is employed as a Officer, at the Utah State Prison for the Utah Department of Corrections. At the time the claim(s) alleged in this complaint arose, this defendant was acting under color of state law in that he is an officer for the Utah Department of Corrections and is directly responsible for the wrongful actions alleged herein.

11. Defendant Elizabeth Smith, is a citizen of Utah, and is employed as a sergeant, at the Utah State Prison for the Utah Department of Corrections. At the time the claim(s) alleged in this complaint arose, this defendant was acting under color of state law in that she is a sergeant, for the Utah Department of Corrections and is directly responsible for the wrongful actions alleged herein.

12. Defendant Blake Nielson, is a citizen of Utah, and is employed as a Deputy Warden, at the Utah State Prison for the Utah Department of Corrections. At the time the claim(s) alleged in this complaint arose, this defendant was acting under color of state law in that he is a Deputy Warden, for the Utah Department of Corrections and is directly responsible for the wrongful actions alleged herein.

13. Defendant Scott Carver, is a citizen of Utah, and is employed as a Warden, at the Utah State Prison for the Utah Department of Corrections. At the time the claim(s) alleged in this complaint arose, this defendant was acting under color of state law in that he is a Warden, for the Utah Department of Corrections and is directly responsible for the wrongful actions alleged herein.

14. Defendant John Does 1-10, whose true names are unknown and when true names are ascertained the pleadings will be amended accordingly, are citizens of Utah, and are employed at the Utah State Prison. At the time the claim(s) alleged in this complaint arose, these defendants were acting under color of state law in that they are employees for the Utah Department of Corrections and are directly responsible for wrongful actions alleged herein.

15. Jurisdiction is invoked pursuant to 28 U.S.C. Sec. 1333 (3); 42 U.S.C. 1983.

#### **B. NATURE OF CASE**

16. Plaintiff complains that he is being denied necessary Neuroten pain medication and physical therapy by the above-named defendants at the Utah State Prison.

17. On or about May 14, 2006, plaintiff underwent surgery on his neck at the University Medical Center. Petitioner was prescribed pain medication and physical therapy when he was returned to the Utah State Prison.

18. Plaintiff is taken to the University Medical Center 2 to 3 times a month because he only has 5% strength in his left arm and 50% strength in his right arm. Plaintiff is not able to

lay on the left side because of the pain in his left arm, shoulder and leg. Plaintiff is unable to sleep on his left side. Plaintiff's hips and thighs hurt as a result of his guarded condition.

19. Plaintiff indicates that he has a tens unit which helps a little but does not relieve all the pain he has to endure. Plaintiff is taken to the prison infirmary and lays on warm packs for about 30 minutes to an hour, but it does not relieve all of the pain. Plaintiff receives Ultram twice a day, which only works for about 30 minutes and then he is in constant pain until the next Ultram pill which again only lasts for 30 minutes. Plaintiff received a Gabapentu capsule three times a day, Gabapentu is generic for Neuroton. Neuroten medication has been taken away. Said medication only lasts for two hours at the most and then plaintiff is in pain.

20. Plaintiff complains that Defendant Armstrong indicates in a medical note on September 28, 2006, that plaintiff seemingly is making satisfactory progress with rehab at this time, not aware of any acute problems. Plaintiff complains that this statement is false, because plaintiff does not go to rehab because the prison does not have a rehab center for plaintiff to attend rehab.

21. Plaintiff complains that defendants Sparks, Rasmussen, Wolfe, Bible, Smith, John Doe Deputy Warden refused to allow the plaintiff to go to the Gym between 9:00 a.m. and 10:00 a.m. to do exercises on his own as some sort of rehabilitation.

22. Plaintiff has requested additional pain medication and physical therapy and has been denied. Plaintiff will be unable to recover full strength in his arms, back and legs without the necessary physical therapy.

23. Defendants are violating the plaintiff's rights by their refusal to allow plaintiff pain medication and physical therapy. As a result plaintiff is entitled to punitive damages.

### **C. CAUSE OF ACTION**

24. Plaintiff alleges that the following constitutional rights, privileges or immunities have been violated and that the following facts form the basis for the allegations:

1. Count I: Plaintiff's Eighth Amendment right to be free from cruel and unusual punishment has been violated by Defendants actions in that they are denying him medications that have been prescribed and which he needs as a result of his neck surgery and denying him physical rehab therapy which he needs in order to recover fully from the surgery.

### **D. PREVIOUS LAWSUITS AND ADMINISTRATIVE RELIEF**

25. Plaintiff has not filed any other law suits in state or federal court dealing with the same facts involved in this action.

26. Plaintiff has previously sought informal or formal relief from the appropriate administrative officials regarding the acts complained of herein as follows: Plaintiff filed grievances through the prison process and has been denied on all levels of the grievances.

### **E. REQUEST FOR RELIEF**

WHEREFORE, Plaintiff prays for the following relief:

- a) Trial by jury.
- b) That counsel be appointed to represent the Plaintiff in this action.
- c) Punitive damages in the amount of \$10,000.00.

- d) Compensatory damages in the amount of \$10,000.00.
- e) Grant attorney fees and court costs for this action.
- f) Such other and further relief the court deems just and proper.

DATED this 8 day of feb, 2007.

James Hostetter  
James Hostetter  
Plaintiff

**DECLARATION UNDER PENALTY OF PERJURY**

The undersigned declares under penalty of perjury that he is the plaintiff in the above action, that he has read the above complaint and that the information contained therein is true and correct. 28 U.S.C. Sec. 1976. 18 U.S.C. Sec. 1621.

EXECUTED at 2-8-07 on feb, 2006.

James Hostetter

## CIVIL COVER SHEET

The JS 44 Civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers required by law or as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

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## I. (a) PLAINTIFFS

James Hostetter

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

FILED  
U.S. DISTRICT COURT

UTAH

2007 APR - 2

## DEFENDANTS

Richard E. Balbom, Jr., MD

Debris Abbott, PA

Shanley Robert U.S. DISTRICT COURT

UTAH

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

BY:

DEPUTY CLERK

James Armstrong, RPT

Kerrion T. Armstrong, RPT, MD

Clint Fries, Warden

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

<input checked="" type="checkbox"/> 1 U.S. Government Plaintiff	<input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input checked="" type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State	<input checked="" type="checkbox"/> PTF	<input checked="" type="checkbox"/> DEF	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> PTF	<input type="checkbox"/> DEF
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> PROPERTY RIGHTS	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 440 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 860 Occupational Safety/Health	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> LABOR	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> REAL PROPERTY	<input type="checkbox"/> CIVIL RIGHTS	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 875 Customer Challenge
<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> Habeas Corpus:	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 12 USC 3410
	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 890 Other Statutory Actions
	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 891 Agricultural Acts
	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 892 Economic Stabilization Act
	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> FEDERAL TAX SUITS	<input type="checkbox"/> 893 Environmental Matters
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 894 Energy Allocation Act
			<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
			<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
				<input type="checkbox"/> 895 Freedom of Information Act
				<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
				<input type="checkbox"/> 950 Constitutionality of State Statutes

## V. ORIGIN

(Place an "X" in One Box Only)

 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

Medical malpractice Refusal of treatment, Rehab

## VII. REQUESTED IN COMPLAINT:

 CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23DEMAND \$ 300,000.000 CHECK YES only if demanded in complaint:  Yes  No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_

APPLYING IFP \_\_\_\_\_

Judge Ted Stewart  
DECK TYPE: Civil

DATE STAMP: 04/02/2007 @ 12:43:50

CASE NUMBER: 2:07CV00197 TS